No. _____

In The

Supreme Court of the United States

LEVI BREEDLOVE,

Petitioner,

v.

MCCALLA, RAYMER, PADRICK, COBB, NICHOLS & CLARK, LLC, *et al.*,

Respondents.

On Petition For Writ Of *Certiorari* To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF *CERTIORARI*

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October 10, 2005

QUESTIONS PRESENTED

In a Title VII case at the end of discovery, Petitioner notified Respondent's Counsel that he would rely on "the Swanson letter" (just discovered in a file in another case) in response to motion for summary judgment. Eight days later Counsel asserted that the letter was "**forged**," promised to conduct an investigation and to report the results to Petitioner - on which he relied. After further requests for results, extensions of time to respond, more promises that investigation was underway, and with deadlines at hand, Petitioner moved to amend plaintiff's complaint and responded to the motion citing the letter with **advice to the court** that Counsel claimed the letter was forged. Within days after the last filing, Counsel moved under **Rule 56(g)** to strike the letter and a statement that relied on plaintiff's affidavit (that in turn relied in part on the letter).

(1) Against the backdrop of an earlier "Magistrate Judge's Show Cause Order" (132a) addressed to "the parties," Is an "**Order**" (130a) – not addressed to anyone - calling for a "hearing pursuant to [Respondents'] request for hearing on Rule 56(g) and for potential violations of Rule 11(b) regarding **Plaintiff's** submission of affidavit and document 12 in ... response to motion for summary judgment" - compliant with **Rule 11(c)(1)(B)**, F.R.Civ.P., and Fifth Amendment Due Process?

(2) Where plaintiff was not present and nobody was sworn at the oral-argument hearing, at which the magistrate raised for the first time the issue of "**fraud on the court**", and where Petitioner was surprised by revelation of harmful *ex parte* deposition of plaintiff's daughter, was Petitioner entitled to an **evidentiary hearing on his good faith** under the Fifth Amendment prior to being ruinously and vindictively sanctioned?

(3) Where the district court awarded to Respondent **counsel fees** in striking the Swanson letter and replying to a post-hearing motion to stay the magistrate's report that was **mooted** the next day by issuance of the report, was the award of fees in compliance with **Rule 11(c)(2)**?

(4) Where the district judge ruled that "the Court should impose the maximum monetary sanction that Starks and Breedlove can realistically pay." (15a), did the court abuse its discretion under Rule 11(c)(1)(B) in not considering the issue whether Respondent law firm had **mitigated its damages**?

(5) At an evidentiary hearing on Rule 11 *sua sponte* sanctions,

(a) Which party should bear the **burden of proof** and what quantum of proof should be required?

(b) Is the **impact of non-monetary sanctions** on the sanctioned person relevant under Rule 11(c)(2); *e.g.*, whether same would ruin Petitioner's legal career and bankrupt him?

(c) Should a *mens rea* requirement of **subjective bad faith** be required for a *sua sponte* sanction under Rule 11(c)(1)(B)?

(6) In determining the financial capability of a sanctioned person to pay monetary sanctions under Rule 11(c)(2), is it an abuse of discretion for the district court *sua sponte* to **deputize opposing counsel** to conduct broad and lengthy discovery into that financial capability and must the court set in advance the **accounting principles** under which that capability is to be determined?

OTHER PARTIES TO PETITION

Other parties to this Petition are Pennie A. Alper and Chrissa T. Hammond, employees of McCalla, Raymer, Padrick, Cobb, Nichols & Clark, LLC, a large Atlanta law firm (all are referred together as "Respondents" or "Respondent law firm").

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